Canadian human rights commission | Commission canadienne des droits de la personne

Framework for Compliance Audits Under the *Employment Equity Act*

Equality of opportunity

Audit Process and Statutory Requirements

May 2015

Canada

The purpose of employment equity is to achieve equality in the workplace so that no person is denied employment opportunities or benefits for reasons unrelated to ability.

For more information please contact:

Canadian Human Rights Commission
National Office
344 Slater Street, 8th floor
Ottawa, Ontario K1A 1E1
Telephone: 613-995-1151
Toll Free: 1-888-214-1090
TTY: 1-888-643-3304
Fax: 613-996-9661
Electronic Mail: info.com@chrc-ccdp.gc.ca
Website: www.chrc-ccdp.ca

This document is available in alternative formats upon request.

INTRODUCTION

Purpose

This framework document summarizes the roles, responsibilities, and statutory requirements under the *Employment Equity* Act. It also outlines the Canadian Human Rights Commission's approach for its employment equity (EE) Compliance Program by providing information on the strategic planning of audits as well as on the audit process.

Constantly trying to improve

In order to contribute to a climate of predictability, transparency, and accountability needed by employers to facilitate the achievement of EE, the Commission has implemented the following initiatives:

- Publication of a forward plan for notification, so that employers are informed in advance that they will be subject to an assessment. Being assessed or audited does not mean that the employer is not in compliance with the Act.
- Establishment of service standards for the compliance audit program to increase the predictability of the compliance review process for employers.
- Service standards performance reporting on the Commission's website.
- A shorter assessment questionnaire, for employers undergoing a follow-up audit, that focuses on essential information to achieve results.
- A feedback survey sent along side final audit reports in order to gain an employer's or employers' insight into the compliance review process.

FRAMEWORK

Roles and responsibilities under the *Employment Equity Act*

Federally regulated employers

It is the employer's responsibility to develop and implement an EE program in consultation and collaboration with employee representatives. This collaborative approach is important in working towards equality in the workplace for the four designated groups: women, Aboriginal peoples, persons with disabilities and members of visible minorities.

Federally regulated employers are required to analyze their workforce to determine representation gaps for designated groups by the EE occupational groups. Employers must then review their employment systems to identify employment barriers for these groups in the occupational groups where they are under-represented. Subsequently, organizations are to develop an EE Plan including measures to address these barriers.

Where under-representation exists, employers are required to implement an EE plan that will lead to progress in increasing representation. It is the employer's obligation to monitor the implementation of its EE plan and to revise it to reflect the changing circumstances in which the employer operates.

The Act currently applies to over 500 federally regulated private-sector organizations and Crown corporations which, taken together, have a combined workforce of more than 770,000 employees. The Act also applies to all federal departments and agencies, which include an additional 380,000 employees.

Public Service Commission

The Public Service Commission develops public sector employment policies in the areas of staffing and recruitment and collects related data. Their mandate includes an oversight role for the proper application of the *Public Service Employment Act* by all federal departments and agencies.

Employment and Social Development Canada

Employment and Social Development Canada administers the *Employment Equity Act,* provides advice and training to private sector employers, and ensures they submit their annual reports as required by the Act. The department also develops national workforce availability estimates, tables an annual report to Parliament on the EE results of the federally regulated private sector. The department also administers the Federal Contractors Program for EE. For more information on the implementation of the statutory requirements, please consult the department's website (Employment and Social Development Canada).

- Implementation of an EE Program
- Other tools and resources on EE

Office of the Chief Human Resources Officer of the Treasury Board Secretariat

The Office of the Chief Human Resources Officer of the Treasury Board Secretariat, maintains an EE self-identification databank on public sector employers. They calculate the representation and availability rates for each department and agency in the federal public sector. Finally, it also consolidates public sector EE reports and tables an overall annual report on EE to Parliament.

Employees and unions representatives

The *Employment Equity Act* states that employee representatives, including unions, are to collaborate in the preparation, implementation, and revision of the employer's EE plan. They can also help minimize the adverse impact of certain seniority clauses in collective agreements that affect members of designated groups by collaborating with the employer to address issues.

Under the Act, consultation and collaboration between employers and unions are not considered forms of co-management and final responsibility for compliance rests with the employer.

Canadian Human Rights Commission

The Canadian Human Rights Commission conducts compliance audits of federally regulated private sector employers, Crown corporations and federal public sector organizations to ensure compliance with the *Employment Equity Act.*

Statutory requirements

Under section 22 of the Act, the Commission can conduct a compliance audit of the following nine statutory requirements:

1. Collection of workforce information
2. Workforce analysis
3. Review of employment systems, policies and practices
4. Employment equity plan
5. Implementation and monitoring of employment equity plan
6. Periodic review and revision of employment equity plan
7. Information about employment equity
8. Consultation and collaboration
9. Employment equity records

Confidentiality

Section 34 of the *Employment Equity Act* requires that information gathered during compliance audits be treated as confidential. However, the Commission is also subject to the disclosure requirements of the *Access to Information Act,* which takes precedence over the stipulations of the *Employment Equity Act.*

Under the *Access to Information Act*, some third-party information can be protected from release. This includes information of a financial or commercial nature that could result in material financial loss or gain, prejudice the competitive position, or interfere with contractual or other negotiations with third parties. As well, under the *Privacy Act*, information of a personal nature can be protected from public release.

Upon receiving a request under the *Access to Information Act,* the Commission may be required to release any documents on file which do not contain personal information, trade secrets or other confidential business information. The Commission will advise the employer that a request under this Act has been received, and the organization will be given the opportunity to submit reasons why this material should or should not be released.

Section 34 of the *Employment Equity Act* also prohibits the use of information obtained by the Commission as a result of compliance audits in any proceedings under any other act, including the *Canadian Human Rights Act,* without the written consent of the employer or the individual from whom it has been obtained.

PROCESS FOR EMPLOYMENT EQUITY AUDITS

The Commission's compliance program helps employers achieve their EE objectives by requiring accurate data collection, consultation with employees' representatives, establishment of reasonable short-term numerical goals, and the implementation of special measures to correct under-representation.

In assessing these elements, the Commission takes into account employers' challenges and acknowledges progress on the way to full representation.

Results and risk-based audit selection process

The Commission has adopted a results-and risk-based approach for its audit selection process. In selecting employers to be audited, the Commission takes into account the potential impact on EE results[1] by focusing primarily on employers with:

- more than 500 employees, which covers approximately 90% of all federally regulated employees;
- lower overall EE results than the rest of their sector; and
- lower EE progress achieved since the last assessment.

Every three years, the Commission notifies employers with more than 500 employees that they have been selected for an assessment. Additional random notifications are conducted in the process to cover all federally regulated employers.

The Commission aims to complete approximately 100 assessments of employer per year, of which more than an half will be subject to an audit (e.g. employers with lower EE results).

[1] Refers to the ratio between representation in the workplace and availability in the labour market.

Notification and Assessment: To audit or not to audit

Employers are notified in writing that their organization will be subject to an employment equity (EE) compliance review and are required to provide a copy of their most recent workforce analysis within two weeks.

Upon review of the employer's workforce analysis, the Commission will implement one of the following options:

- For an employer considered to have a **more successful overall EE result** in comparison to its sector, no further assessment of compliance will be undertaken at this time. Instead, an EE Status report will be produced based on the workforce analysis results and the employer's reported activities over the year.

- For employer with a **less successful EE result,** additional information will be requested through an audit questionnaire to assess the employer's compliance with the Act.

1. For employers that have **never been audited**, the compliance audit will focus on nine main statutory requirements

2. For employers with **improved** EE results since the last audit, the audit will focus solely on two requirements of the Act, namely:

    - A revised EE plan, to ensure continuity of progress already achieved; and

    - Ongoing consultation and collaboration with employee representatives.

3. For employers with **very little or no improvement** in EE results, the audit will focus on the following elements:

    - A revised employment systems review – to ensure that all employment barriers have been identified;

    - A new EE plan, with improved initiatives to achieve results;

    - Ongoing consultation and collaboration with employee representatives; and

    - Reasonable progress

Audit questionnaire: evaluation of compliance status

Employers subject to a first audit will be given up to 60 calendar days to complete and submit the audit questionnaire on the nine legislative requirements and the supporting documentation. Employers subject to a subsequent audit will be given up to 30 calendar days to complete and submit the audit questionnaire and supporting documentation.

The questionnaire and supporting evidence form the basis on which the organization's performance will be assessed against the requirements of the Act.

Further analysis will focus on the most significant areas of concern identified through the workforce analysis and the audit questionnaire assessment. This often means testing or sampling only specific areas to verify the appropriateness of the analysis completed.

Verification: validation of the information obtained

Initial audits

On-site visits and interviews are important to better understand the workplace operational context, clarify legislative requirements if needed, and validate initial audit findings.

During a first audit, confidential interviews may be conducted with managers, employees, and union representatives. This can be an opportunity to verify the extent of consultation, and collaboration between the employer and its employees' representatives.

Visits and interviews (sometimes by phone) will be organized in advance to minimize operational disruption and to accommodate workplace schedules. A "walk-around" may be requested to speak to employees informally and assess the physical accessibility of the premises. The employer may designate an employee to accompany the Commission's representative during the walk-around. The employer will be debriefed on the audit's findings. The debriefing will highlight positive and negative findings, in relation to the legislative requirements and may initiate discussions on undertakings, as required.

Subsequent audits

Subsequent audits usually take place when employers have made little or no progress (in terms of EE results) since their previous audit.

In such cases, visits and interviews with senior managers and employees representatives will happen again to obtain information on the reasons for the lack of progress. The focus will be on the implementation of the previous EE plan and management accountability for EE results. To ensure progress, the Commission's representative will then negotiate guided short-term undertakings with senior management.

Undertakings: employers to redress areas of non-compliance

An undertaking is an agreement negotiated between the Commission and an employer who is found to be non-compliant with the legislative obligations. The proposed undertakings should result in the fulfilment of the statutory requirements and address the specific areas of non-compliance identified in the audit report. If the employer contests the findings, additional documentation to support the employer's position is required.

Employers are provided a maximum of four months to complete the undertakings and submit an implementation report. Once the undertakings are fulfilled and sufficient evidence has been provided, the Commission will provide a final EE audit report to the employer. If the undertakings are not fulfilled, the Commission may consider other actions, including enforcement by issuing a direction.

Reporting: issuing an EE audit report

The EE audit report is the final step in the audit process. It provides a synopsis of the employer's current EE profile, acknowledges the employer's overall context, identifies specific accomplishments and challenges, and conveys the Commission's EE expectations. The EE audit report will be approved by the Commission before being sent to the employer.

Enforcement of the Act: ensuring compliance with a direction

As a last resort, the Commission may issue a direction in three instances:

1. The employer has failed to cooperate with an audit - section 26(1) of the EE Act;

2. The Commission has identified an instance of non-compliance and was unsuccessful in negotiating an appropriate undertaking with the employer - section 25(2) of the EE Act;

3. The employer has breached an undertaking - section 25(3) of the EE Act.

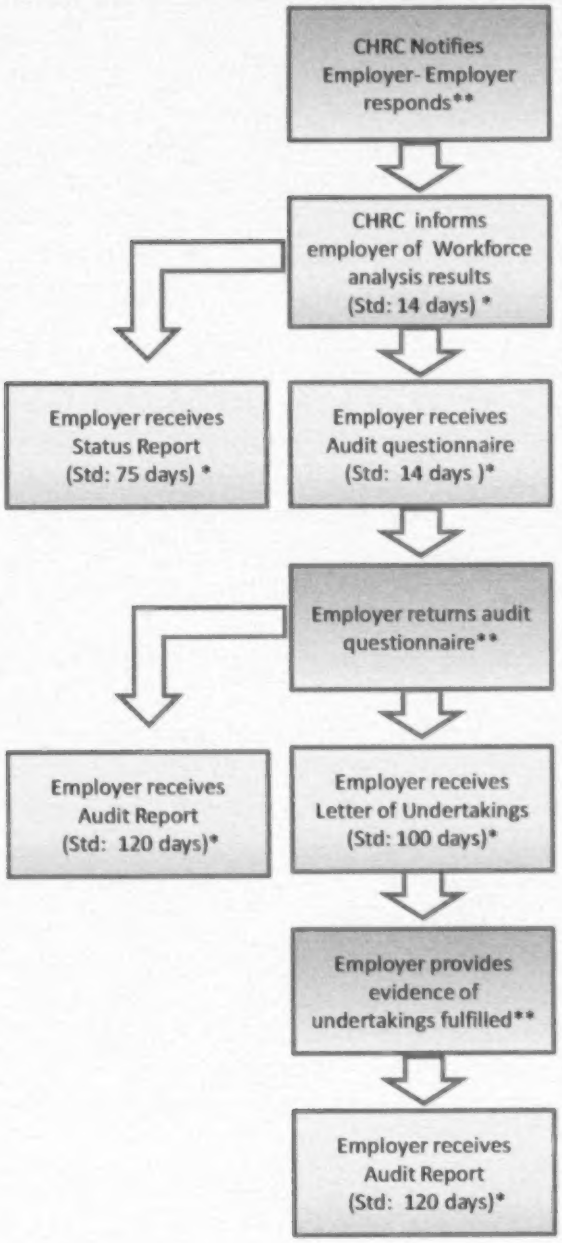
Before a direction is issued, the organization will be provided with a copy of the request for a direction by registered mail and given 30 days to convey its response in writing. The Commission will consider the request for a direction along with the employer's response when deciding whether to issue a direction or adopt another course of action. The employer will be duly informed of the Commission's decision.

If a direction is issued under sections 25(2) or (3), the employer may request a review of the direction within 60 days. If a direction is issued under section 26(1), the employer will have 30 days to request a review. If an employer does not abide by a direction, the Commission can refer the case to the Employment Equity Review Tribunal to obtain an order confirming the direction. The Tribunal's order can be enforced as an order of the Federal Court.

Annex 1 - Service Standards for EE Compliance Audit

As part of its commitments to quality client service, the Canadian Human Rights Commission has developed new service standards for its compliance audit program.

Figure 1: Employment Equity Process


CHRC Notifies Employer- Employer responds**
CHRC informs employer of Workforce analysis results (Std: 14 days) *
Employer receives Status Report (Std: 75 days) *
Employer receives Audit questionnaire (Std: 14 days)*
Employer returns audit questionnaire**
Employer receives Audit Report (Std: 120 days)*
Employer receives Letter of Undertakings (Std: 100 days)*
Employer provides evidence of undertakings fulfilled**
Employer receives Audit Report (Std: 120 days)*

*indicates a CHRC service Standard: set at the 80th percentile of cases

**indicates action to be taken by employer.

Annex 2 – Employers covered by the Act and with more than 500 employees

The audit program focuses primarily on employers with more than 500 employees, which covers approximately 90% of all federally regulated employees, and returns to assess them every three years.

Private Sector Employers and Crown Corporations

7922825 Canada Inc., DBA NETRICOM
Aéroports de Montréal
Air Canada
Air Inuit Ltd
Air Transat inc.
Airport Terminal Services Canadian Co.
Algoma Central Corporation
Allstream Inc.
Amex Bank of Canada
AMJ Campbell Inc.
Association des employeurs maritimes
Atco Structures & Logistics
ATI Telecom International Co.
Atomic Energy of Canada Limited
B&R Eckel's Transport Ltd.
Bank of Canada
Bank of Montreal
Banque Laurentienne du Canada
Banque Nationale Groupe financier
Bell Aliant Inc.
Bell Canada
Bell ExpressVu Limited Partnership
Bell Media
Bell Mobility Inc.
Bell Solutions Techniques Inc.
Bison Transport Inc.
Bradley Air Services Limited
Bragg Communications Inc.
Brink's Canada Limited
British Columbia Maritime Employers Association
Bruce Power LP
Business Development Bank of Canada
Cameco Corporation
Canada Cartage System Limited Partnership
Canada Mortgage and Housing Corporation
Hallcon Crew Transport Inc.
HSBC Bank Canada
Hudson Bay Mining and Smelting Co. Ltd.
IMP Group Limited - Aerospace Division
Information Communication Services
Jazz Aviation L.P.
Jim Pattison Industries Ltd.
JPMorgan Chase Bank, N.A.
Kelowna Flightcraft Group of Companies
Kindersley Transport Ltd.
L-3 Communications MAS (Canada) Inc.
Le Groupe de Sécurité Garda Inc
Le Groupe Océan Inc
Ledcor Industries Inc.
Manulife Bank of Canada
Marine Atlantic Inc.
Masterfeeds LP
Midland Transport Limited
Manitoba Telecom Services Inc.
National Arts Centre Corporation
NAV CANADA
NewCap Inc.
Normandin Transit Inc.
Northwestel Inc.
Nutreco Canada Inc.
Ontario Power Generation
Pembina Pipeline Corporation
Perimeter Aviation LP
Porter Airlines Inc.
Primus Telecommunications Canada Inc.
Provincial Airlines Limited
Purolator Inc.
Reimer Express Lines, Ltd.
Richardson International Limited
Rogers Communications Inc.
Rosenau Transport Ltd.
Royal Bank of Canada
Ryder Truck Rental Canada Ltd.

Canada Pension Plan Investment Board
Canada Post Corporation
Canadian Broadcasting Corporation
Canadian Imperial Bank of Commerce
Canadian National Railway Company
Canadian North Inc.
Canadian Pacific Railway Company
Canadian Western Bank
Candu Energy Inc.
Canjet Airlines, a division of IMP Group
Canpar Transport L.P.
Capital One Bank (Canada Branch)
Cargill Limited
Cascade Aerospace Inc.
Cathay Pacific Airways Limited
CEVA Logistics Canada, ULC
Challenger Motor Freight Inc.
CHC Helicopter Group of Companies
City of Ottawa
Cogeco Cable Canada Inc.
COGECO DIFFUSION ACQUISITIONS INC.
Corus Entertainment Inc.
Day & Ross Inc.
Defence Construction (1951) Ltd.
DHL Express (Canada), Ltd.
Dicom Express Inc
Direct Limited Partnership
Enbridge Pipelines Inc.
Erb Enterprises Inc.
Expertech Network Installation Inc.
Export Development Canada
Farm Credit Canada
Federal Express Canada Limited
FedEx Ground Package System, Ltd.
First Canada ULC
Floyd Sinton Ltd
Globalive Wireless Management Corp.
Greater Toronto Airports Authority
Greyhound Canada Transportation ULC.
Groupe TVA Inc.
H & R Transport Ltd.
S.G.T. 2000 Inc.
Seaspan ULC
Securiguard Services Ltd.
Securitas Transport Aviation Security Ltd.
Servisair Inc.
Shaw Communications Inc.
SLH Transport Inc.
Société de transport de l'Outaouais
Standard Aero Ltd.
Student Transportation of Canada Inc
Sunwing Airlines Inc.
Swissport Canada Handling Inc
Symcor Inc.
Tangerine Bank
TELUS Communications Company
TFI Transport 5 LP
TFI Transport 7 LP
The Bank of Nova Scotia
The Royal Canadian Mint
The St. Lawrence Seaway Management Corporation
The Toronto-Dominion Bank
The Trimac Group of Companies
TransCanada PipeLines Limited
Transport Morneau Inc.
Transport TFI 22, S.E.C.
TransX Ltd.
Trentway-Wagar Inc.
TST Solutions L.P.
Unique Personnel Canada Inc.
United Parcel Service Canada Ltd.
Via Rail Canada Inc.
Vidéotron S.E.N.C.
Viterra Inc.
Westcan Bulk Transport Ltd.
Westcoast Energy Inc.
Westjet Operations Corp.
Westower Communications Ltd.

Public Sector and Separate Agencies

Aboriginal Affairs and Northern Development Canada
Agriculture and Agri-Food Canada
Atlantic Canada Opportunities Agency
Canada Border Services Agency
Canada Revenue Agency
Canada School of Public Service
Canadian Food Inspection Agency
Canadian Forces Pers. Support Agency
Canadian Grain Commission
Canadian Heritage
Canadian Nuclear Safety Commission
Canadian Security Intelligence Service
Canadian Space Agency
Citizenship and Immigration Canada
Communications Security Establishment Canada
Correctional Service of Canada
Courts Administration Service
Employment and Social Development Canada
Environment Canada
Finance Canada
Fisheries and Oceans Canada
Foreign Affairs, Trade & Development Canada
Health Canada
Immigration and Refugee Board
Industry Canada
Justice Canada
Library and Archives Canada
National Defense
National Research Council of Canada
Natural Resources Canada
Office of the Auditor General of Canada
Office of the Chief Electoral Officer
Office of the Commissioner for Federal Judicial Affairs
Office of the Superintendent of Financial Institutions
Parks Canada
Privy Council Office
Public Health Agency of Canada
Public Prosecution Service of Canada
Public Safety Canada
Public Service Commission
Public Works & Government Services Canada
Royal Canadian Mounted Police (Civilian Staff)
Shared Services Canada
Staff of the Non-Public Funds (CFPSA)
Statistical Survey Operations
Statistics Canada
Treasury Board Secretariat
Veterans Affairs Canada

Other Public Sector Employers

Canadian Armed Forces
Royal Canadian Mounted Police (Regular Force)

Annex 3: Resources for Employers

Human Rights Maturity Model - Continuum

Policies, Guides & Other Resources, Canadian Human Rights Commission

- A Place for All: A Guide to Creating an Inclusive Workplace
- A Template for Developing a Workplace Accommodation Policy
- A Template for Developing an Anti-Harassment Policy
- Aboriginal Employment Preferences Policy (Archived)
- Anti-Harassment Policies for the Workplace: An Employers' Guide
    - Checklist: Medium and Large Organizations
    - Checklist: Small Organizations
- Guide to Managing Return to Work (Archived)
- Policy on Alcohol and Drug Testing
- Policy on Environmental Sensitivities
- Policy on Procedures on the Accommodation of Mental Illness (Archived)
- Policy on Special Programs (Archived)
- Pregnancy and Human Rights in the Workplace – A Guide for Employers
- Pregnancy and Human Rights in the Workplace – Policy and Best Practices
- Your Guide to Understanding the Canadian Human Rights Act

Labour Program, Employment and Social Development Canada

- Implementation of an Employment Equity Program
- Other tools and resources on employment equity